

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

PETER SCHULTZ and	)	
DAVID MACK,	)	1:11-CV-06225
Plaintiffs	)	
	)	Hon. William J. Hibbler
v.	)	
	)	
BAC HOME LOANS SERVICING LP,	)	
Defendants	)	

Defendant Bank of America, N.A. (“Defendant”) (improperly named as BAC Home Loans Servicing LP), by its attorneys REED SMITH LLP, answers Plaintiffs Peter Schultz and David Mack’s (“Plaintiffs”) Complaint and states the following affirmative defenses:

**DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS’  
COMPLAINT**

1. Plaintiffs brings this action to secure redress for violations of the Equal Credit Opportunity Act (“ECOA”) 15 U.S.C. § 1691, by their mortgage servicer.

**ANSWER:** Defendant admits that Plaintiffs have brought a claim for alleged violations of the Equal Credit Opportunity Act. Defendant also admits that it is the servicer of a mortgage of the Plaintiffs. Defendant denies the remaining allegations in Paragraph 1.

2. The ECOA, 15 U.S.C. §1691(d)(1) requires that:

Within thirty days (or such longer reasonable time as specified in regulations of the Board for any class of credit transaction) after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.

**ANSWER:** Defendant admits that Plaintiffs have cited from the Equal Credit Opportunity Act but denies the remaining allegations in Paragraph 2.

3. Although plaintiffs applied for a home loan modification in fall 2010, defendant has never sent any written response regarding this application, in violation of the ECOA.

**ANSWER:** Defendant denies the allegations in Paragraph 3.

### **JURISDICTION**

4. This Court has jurisdiction under 28 U.S.C. §§ 1331 (federal question), and 15 U.S.C. § 1691(e) (ECOA).

**ANSWER:** Paragraph 4 states a legal conclusion and Defendant therefore denies the same.

5. Venue is appropriate because a substantial portion of the events that gave rise to this cause of action occurred here. The subject property is located in this District.

**ANSWER:** Defendant admits that it services a mortgaged property owned by Plaintiffs that is located in this District. The first sentence of Paragraph 5 states a legal conclusion and Defendant therefore denies the same. Defendant also denies the remaining allegations in Paragraph 5.

### **PARTIES**

6. Plaintiffs are individuals who reside in this District.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 6, and therefore denies the same.

7. BAC Home Loans Servicing, LP is a mortgage servicer, and is an affiliate of Bank of America.

**ANSWER:** Defendant admits that BAC Home Loans Servicing is a wholly-owned subsidiary of Bank of America, N.A. Defendant also admits that Defendant is a mortgage servicer. Defendant denies the remaining allegations in Paragraph 7.

**FACTS**

8. Plaintiffs obtained a home loan for property in Chicago, Illinois in or around 2009.

**ANSWER:** Defendant admits the allegations in Paragraph 8.

9. In September or October 2010, plaintiffs applied for a modification for their home loan with defendant.

**ANSWER:** Defendant admits the allegations in Paragraph 9.

10. Defendant sent plaintiffs notification that it had received their application on October 6, 2010.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 10, and therefore denies the same.

11. Defendant never sent plaintiffs any request for additional information as to this application.

**ANSWER:** Defendant denies the allegations in Paragraph 11.

12. Defendant never sent plaintiffs any notice that they needed to supplement their application, or that it was incomplete in any way.

**ANSWER:** Defendant denies the allegations in Paragraph 12.

13. Defendant never called plaintiffs to notify them that the application was incomplete or otherwise improper.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 13, and therefore denies the same.

14. Upon information and belief, defendant denied plaintiffs' application for credit in December 2010 or January 2011.

**ANSWER:** Defendant admits that Plaintiffs were denied a loan modification in December, 2010. Defendant denies the remaining allegations in Paragraph 14.

15. As of the filing of this complaint, more than six months after the decision not to extend credit, defendant has never sent plaintiffs any written decision as to this application.

**ANSWER:** Defendant denies the allegations in Paragraph 15.

#### **COUNT I - ECOA**

16. Plaintiff incorporates all previous paragraphs.

**ANSWER:** Defendant incorporates its responses to all previous paragraphs.

17. 15 U.S.C. §1691(d) requires that a servicer provide a response to an application for credit within 30 days.

**ANSWER:** Paragraph 17 states a legal conclusion and Defendant therefore denies the same.

18. Defendant has never provided plaintiffs any written notification of any action with regard to their September/October 2010 application.

**ANSWER:** Defendant denies the allegations in Paragraph 18.

19. Furthermore, and alternatively, defendant did not provide plaintiffs any notice that their application was wanting. 12 C.F.R. §202.9(c).

**ANSWER:** Defendant denies the allegations in Paragraph 19.

20. Plaintiffs have been damaged by these violations.

**ANSWER:** Defendant denies the allegations in Paragraph 20.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiffs' claims are defeated by the doctrine of estoppel.
2. Plaintiffs' claims are defeated by the doctrine of unclean hands.

Dated: October 31, 2011

Respectfully submitted,

Bank of America, N.A.

/s/ Timothy R. Carraher  
One of its Attorneys

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 31st day of October, 2011, the foregoing **Defendant's Answer and Affirmative Defenses to Plaintiffs' Complaint** was filed electronically using the ECF System, which will send notification of such filing to all parties of record in the above captioned matter.

Bank of America, N.A.

By: s/Timothy R. Carraher  
One of Their Attorneys

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